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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,560	05/07/2001	Nichimu Inada	206253US3PC	1157
22850	7590	11/21/2003	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			THANH, QUANG D	
			ART UNIT	PAPER NUMBER
			3764	14

DATE MAILED: 11/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/830,560

Applicant(s)

INADA ET AL.

Examiner

Quang D. Thanh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 39-96 is/are pending in the application.
- 4a) Of the above claim(s) 44-47 and 52-93 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39-43 and 48-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

1. Currently, claims 39-96 are pending in this application. Claims 44-47 and 52-93 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. At this time, it is acknowledged that Applicant has timely traversed the restriction (election) requirement filed in Paper No. 7.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 40-41 and 50-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Canto (WO 98/57611). Canto discloses a massaging device having a pair of supporting arms 5 each pivotally supporting a therapeutic member 6,15 (figs. 1,3,4,9); pivotal-positioning sensors 17 configured to detect each supporting arm that has reached a prescribed range of pivotal positions; pivotal-positioning sensor means 17 for detecting a prescribed range of pivotal positions. It is inherent that the sensors 17 can detected a range of angular positions (see abstract).

4. Claim 42 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Canto '611 in view of Otuka et al. (4,576,149). Canto discloses a massaging device having a pair of supporting arms 5 each pivotally supporting a therapeutic member, and teaches a plurality of sensors 17 having the task of controlling the turning angle of the different shafts and transmitting this to the microprocessor. Canto also teaches that the same system is employed to control the vertical location of the massage motors, and therefore it is inherent that other sensors 17 would be also able to detect the vertical positions of the supporting arms. Alternatively, if Canto's sensors 17 are not viewed as means for detect the vertical positions of the supporting arms, then Otuka also teaches a massager having a vertical position detector 61 comprising sensors S1,S2 for detecting vertical positions of the massaging elements (col. 5, lines 39-66). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include vertical-position sensors in Canto's device, as suggested by Otuka et al, for the purpose of providing means to vertically detect the position of the massage element with respect to the user's body in order to selectively massage a portion of the user's body as desired.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canto '611 in view of Otuka et al. (4,576,149). Canto discloses a massaging device having all the features as claimed except for a sensor to detect a position of a specific portion of the user with respect to the device by determining a relationship between a vertical position and a pivotal position of the supporting arm. However, Canto teaches a plurality of sensors 17 having multiple tasks of controlling the turning angle of the different shafts and transmitting this to the microprocessor, these multiple tasks including multiple options of for distancing between the vertical massaging wheels, and multiple pressure options in the vertical massaging. Canto also teaches that the same system is employed to control the vertical location of the massage motors, and therefore it is inherent that sensors 17 would be also able to detect the vertical positions of the supporting arms. Moreover, Otuka also teaches a massager comprising a vertical position detector 61, a width detector 74 and a projection detector 76; and each detector having sensors for detecting vertical positions, distance spacing and various projections of the massaging elements (col. 5, lines 39 to col. 6, line 68), . Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include a sensor to detect both vertical and pivotal positions in Canto's device, as taught by Canto and suggested by Otuka et al, for the purpose of providing means to detect both vertically and pivotally the position of the massage element with respect to the user's body in order to selectively massage a portion of the user's body as desired.

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7. Re claims 48-49, Canto discloses that the sensor can detect the position of the user's shoulder.

8. Re claim 43, Otuka teaches the sensor holders are provided with sensors each comprising light emitting and receiving elements (col. 5, lines 56-61).

***Response to Arguments***

9. Applicant's arguments with respect to claims 39-43 and 48-51 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Quang D. Thanh  
Patent Examiner  
Art Unit 3764  
November 17, 2003



**NICHOLAS D. LUCCHESI  
SUPERVISORY PATENT EXAMINER  
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